Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur v Bungsar Hill Holding Sdn Bhd

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO S3(S1)-21–90 OF 2001 AND CIVIL APPLICATION NO S4-15–13 OF 2013
AZIZUL AZMI ADNAN JC
2 DECEMBER 2014

Land Law — Acquisition of land — Compensation — Party filed competing claim to compensation payable for compulsory acquisition of land — Land administrator paid compensation monies into court pending resolution of dispute between land owner and competing claimant — Land owner found to be entitled to whole of compensation amount — Whether court had power under Land Acquisition Act 1960 ('LAA') to order competing claimant to pay land owner pre-judgment and post-judgment interest on compensation monies deposited in court — Whether any award made under Part V of LAA was 'judgment' that attracted post-judgment interest under O 42 r 12 of the Rules of Court 2012 and gave court discretion to award pre-judgment interest under s 11 of the Civil Law Act 1956 — Whether court had jurisdiction/discretion to award interest to compensate rightful claimant for being denied use of compensation monies because of competing claimant's action

The issue which arose for determination in the instant case was whether a party which filed a competing claim for compensation in respect of land acquired under the Land Acquisition Act 1960 ('the LAA') could be ordered by the court in a land reference proceeding to pay a co-claimant interest on compensation monies the land administrator had paid into court as a result of the dispute. The basis for the order of interest was to compensate the rightful recipient of the compensation for having been put out of use of the funds which it would have received much earlier if there had not been a competing claim. The land owner in the instant case whose land was compulsorily acquired was Bungsar Hill Holdings Sdn Bhd ('BH'). Damansara Realty ('DR'), claiming it had an interest in the land, lodged a competing claim for the compensation. As a result, the land administrator pursuant to an order under s 29(2) of the LAA ('the S3 action') paid into court the compensation monies for the acquisition pending determination of who was rightfully entitled to it. The total amount deposited in court was RM7,659,101.18 (made up of RM6,856,597.50 in principal and RM802,503.68 as late payment charges). By a consent order recorded in the ensuing land reference proceedings ('the S4 action'), an additional RM425,505 in compensation was paid into court. The consent order provided that there would be no order as to costs and interest. When the Federal Court dismissed DR's appeal with regard to its claim and it became

settled that BH was wholly entitled to the compensation monies, BH applied to have the monies released to it. On 30 April 2013, the registrar ordered the RM7,659,101.18 in the S3 action and the RM425,505 in the S4 action to be released to BH. BH received the amount deposited in the S3 action on 21 October 2013. The registrar subsequently ordered DR to pay BH pre-judgment interest at 8%pa and post-judgment interest at 5%pa on the compensation monies that were paid into Court. In the instant appeal to the judge in chambers against that order, DR contended that: (i) the compensation monies was not a 'debt or damages' it had to pay BH; (ii) there was no judgment in the S3 and S4 actions requiring DR to pay BH any sum of money, hence the question of post-judgment interest under O 42 r 12 of the Rules of Court 2012 or pre-judgment interest under s 11 of the Civil Law Act 1956 did not arise; (iii) there was no agreement between the parties that DR would pay BH interest on the compensation monies; neither did DR have use of those monies; (iv) the court had no power under the LAA to order DR to pay BH interest on the compensation monies and it had therefore acted ultra vires; (v) as the law already provided for interest to be payable by the Ministry of Finance on the amounts paid into court, there was no further liability for any party to pay additional interest on such amounts; and (vi) as far as the S4 action was concerned, because of the consent order, res judicata prohibited BH from claiming interest and costs. DR contended that there was no provision in the LAA that allowed a co-claimant to the compensation sum in a land reference proceeding to claim interest on the compensation sum from the other claimant; that the LAA only provided for the land administrator to pay late payment charges at an interest rate of 8%pa. It was also submitted that since matters concerning acquisition of land and payment of compensation therefor were wholly governed by the LAA, a party could only be granted remedies that were provided for under the LAA. BH, meanwhile, appealed against the registrar's refusal to award it costs for the S3 and S4 actions.

Held:

(1) The court had jurisdiction to award both pre-judgment and post-judgment interest in respect of a compensation sum awarded under the LAA. When a reference was made to the court and the reference did not involve a dispute as to the amount payable, then assessors would not be appointed but that did not make the decision of the judge sitting alone any less of a 'judgment' for the purposes of s 47 of the LAA. Accordingly, any award made pursuant to Part V of the LAA would be considered to be a judgment not only for the purposes of O 42 r 12 of the Rules of Court 2012 ('ROC') but also of s 11 of the Civil Law Act 1956 ('the CLA'). Post-judgment interest was recoverable under O 42 r 12 of the ROC read together with s 45(2) of the LAA. The court had discretion to award interest on monies paid into court by the land administrator against a co-claimant in a land reference proceeding notwithstanding the

co-claimant did not have the use of the monies for the relevant period and notwithstanding the absence of any agreement between the parties regarding interest on the monies deposited (see paras 21–22, 30 & 48).

(2) The fundamental principle regarding the payment of interest was to compensate the claimant for loss of use of funds. It was only fair that where a person by his conduct had wrongfully kept another out of funds he should be held liable for the consequences of his action. This principle applied not only in respect of pre-judgment interest under s 11 of the CLA but also in the case of post-judgment interest pursuant to O 42 r 12 of the ROC. The imposition of interest was also justified from a policy perspective. A competing claim to compensation for compulsorily acquired land was a serious matter. A person who disputed the payment of a compensation sum must be prepared to bear the consequences of his actions should a court determine his claim was without merit. That a claimant genuinely believed he had a legitimate claim to the compensation sum or to a part of it was immaterial. Making a co-claimant responsible to pay interest on the compensation sum was not only fair for the rightful owner of the acquired land but it also ensured claims were not made on the whim of a hopeful but unmeritorious claimant (see paras 43, 46–47).

(3) On a proper construction of the consent order in the S4 action, the term of the order on costs and interest precluded BH from claiming costs and interest in that action (see para 48).

(4) Order 90 r 6 of the ROC provided for interest to be paid in respect of monies lodged in court. An interest rate of 2%pa was prescribed by Pekeliling Ketua Pendaftar Bil Tahun 1998. BH was therefore entitled as of right to interest at 2%pa on the monies that were deposited in court in the S3 and S4 actions. Its right to receive that interest was unaffected by the consent order in the S4 action. Applying O 90 r 7 of the ROC, 2%pa interest was payable by the Accountant-General from 1 August 2002 until 30 September 2013 with respect to the monies deposited in the S3 action and from 1 February 2008 until 30 September 2013 with respect to the sum deposited in the S4 action (see paras 49–50, 58–59, 61–63).

(5) The interest payable by DR to BH should run from the time the compensation sums would have otherwise been paid to BH if not for DR's competing claim which resulted in the monies being paid into court instead. In respect of the S3 action, that date was 10 July 2002. The pre-judgment interest rate payable by DR for the relevant period in the present case, however, had to be adjusted downwards to 3%pa to take into account: (a) O 90 r 6(3) of the ROC, in that if BH had applied under that provision for the compensation monies to be deposited in an interest-bearing account with a licensed commercial bank, it would have received a higher sum; and (b) the delay by BH in applying for the release

of the compensation monies immediately after the Federal Court dismissed DR's appeal on 11 October 2011. As BH only made the application on 11 March 2013, DR ought not to be liable for pre-judgment interest between 12 October 2011 and 11 March 2013 (see paras 54, 56–57).

(6) The principle enunciated by the Court of Appeal in *Parkson Corp Sdn Bhd v Fazaruddin bin Ibrahim (t/a perniagaan Fatama)* [2002] 4 MLJ 122 could not preclude the court from awarding either pre-judgment or post-judgment interest on a compensation sum under the LAA even though such interest was not specifically provided for in the LAA (see paras 20 & 35).

[Bahasa Malaysia summary

Isu yang timbul untuk penentuan dalam kes ini adalah sama ada pihak yang memfailkan tuntutan bersaing untuk pampasan berkaitan tanah yang diperoleh di bawah Akta Pengambilan Tanah 1960 ('KPT') boleh diperintahkan oleh mahkamah dalam prosiding rujukan tanah untuk membayar penuntut bersama faedah atas wang pampasan yang perlu di bayar oleh pentadbir tanah kepada mahkamah akibat daripada pertikaian itu. Asas perintah untuk faedah itu adalah untuk memberi pampasan kepada penerima sebenar kerana terpaksa mengeluarkan penggunaan wang yang patut diterimanya lebih awal jika tidak terdapat tuntutan bersaing. Pemilik tanah dalam kes ini yang mana tanahnya wajib diperoleh adalah Bungsar Hill Holdings Sdn Bhd ('BH'). Damansara Realty ('DR'), mendakwa ia mempunyai kepentingan dalam tanah itu, telah membuat tuntutan bersaing untuk pampasan. Akibat itu, pentadbir tanah itu menurut perintah di bawah s 29(2) APT ('tindakan S3') telah membayar kepada mahkamah wang pampasan untuk pengambilalihan itu sementara menunggu penentuan siapa yang sepututnya berhak ke atasnya. Keseluruhan jumlah yang didepositkan di mahkamah adalah RM7,659,101.18 (terdiri daripada RM6,856,597.50 secara prinsipal dan RM802,503.68 sebagai caj bayaran lewat). Melalui perintah persetujuan yang direkodkan dalam prosiding rujukan tanah berikutnya ('tindakan S4'), tambahan RM425,505 sebagai pampasan dibayar kepada mahkamah. Perintah persetujuan memperuntukkan bahawa tidak ada perintah untuk kos dan faedah. Apabila Mahkamah Persekutuan menolak rayuan DR berkaitan tuntutannya dan menjadi jelas bahawa BH berhak keseluruhannya untuk wang pampasan itu, BH telah memohon agar wang itu dilepaskan kepadanya. Pada 30 April 2013, pendaftar memerintahkan RM7,659,10118 dalam tindakan S3 dan RM425,505 dalam tindakan S4 dilepaskan kepada BH. BH telah menerima jumlah yang didepositkan dalam tindakan S3 pada 21 Oktober 2013. Pendaftar berikutan itu telah memerintahkan DR untuk membayar faedah pra-penghakiman pada 8% setahun dan faedah pasca penghakiman pada 5% setahun atas wang pampasan yang dibayar kepada mahkamah. Dalam rayuan ini kepada hakim dalam

kamar terhadap perintah tersebut, DR berhujah bahawa: (i) wang pampasan bukan 'debt or damages' yang perlu dibayarnya kepada BH; (ii) tiada penghakiman dalam tindakan-tindakan S3 dan S4 yang menghendaki DR untuk membayar BH apa-apa jumlah wang, justeru persoalan tentang faedah pasca penghakiman di bawah A 42 k 12 Kaedah-Kaedah Mahkamah 2012 atau faedah pra-penghakiman di bawah s 11 Akta Undang-Undang Sivil 1956 tidak timbul; (iii) tiada perjanjian diantara pihak-pihak bahawa DR akan membayar BH faedah atas wang pampasan itu; DR juga tidak menggunakan wang tersebut; (iv) mahkamah tiada kuasa di bawah APT untuk memerintahkan DR membayar BH faedah atas wang pampasan itu dan oleh itu ia telah bertindak ultra vires; (v) oleh kerana undang-undang telahpun memperuntukkan untuk faedah yang perlu dibayar kepada Kementerian Kewangan bagi jumlah yang dibayar kepada mahkamah, tiada liabiliti selanjutnya untuk mana-mana pihak membayar faedah tambahan atas jumlah tersebut; dan (vi) setakat mana tindakan S4 adalah berkenaan, oleh kerana perintah persetujuan itu, res judicata melarang BH daripada menuntut faedah dan kos. DR berhujah bahawa tiada peruntukkan dalam APT yang membenarkan penuntut bersama ke atas jumlah pampasan dalam prosiding rujukan tanah untuk menuntut faedah ke atas jumlah pampasan daripada penuntut lain; bahawa APT hanya memperuntukkan untuk pentadbir tanah membayar caj bayaran lewat pada kadar faedah 8% setahun. Ia juga dihujahkan bahawa oleh kerana perkara-perkara berkaitan pemerolehan tanah dan bayaran pampasan dikawal keseluruhannya oleh APT, satu pihak hanya boleh diberikan remedi yang diperuntukkan di bawah APT. BH, pada masa sama, telah merayu terhadap keengganan pendaftar untuk mengawardkan kos kepadanya untuk tindakan-tindakan S3 dan S4.

Diputuskan:

(1) Mahkamah mempunyai bidang kuasa untuk mengawardkan faedah pra-penghakiman dan pasca penghakiman berkaitan jumlah pampasan yang diawardkan di bawah APT. Apabila rujukan dibuat ke mahkamah dan rujukan itu tidak melibatkan pertikaian berhubung jumlah yang perlu dibayar, maka penilai-penilai tidak akan dilantik tetapi itu tidak akan menjadikan keputusan hakim yang bersidang sendiri tidak kurang seperti satu 'judgment' bagi tujuan s 47 APT. Sewajarnya, apa-apa award yang dibuat menurut Bahagian V APT akan dianggap sebagai penghakiman bukan sahaja bagi tujuan A 42 k 12 Kaedah-Kaedah Mahkamah 2012 ('KKM') tetapi juga s 11 Akta Undang-Undang Sivil 1956 ('AUS'). Faedah pasca penghakiman boleh diperoleh semula di bawah A 42 k 12 KKM dibaca bersama s 45(2) APT. Mahkamah mempunyai budi bicara untuk mengawardkan faedah ke atas wang yang dibayar kepada mahkamah oleh pentadbir tanah terhadap penuntut bersama dalam prosiding rujukan tanah meskipun penuntut bersama tidak mempunyai kegunaan wang untuk tempoh berkaitan dan

meskipun ketiadaan perjanjian antara pihak-pihak berkenaan faedah atas wang yang didepositkan (lihat perenggan 21, 22, 30 & 48). A

(2) Prinsip asas berhubung bayaran faedah adalah untuk memberi pampasan kepada penuntut untuk kehilangan penggunaan dana. Ia hanya adil jika seseorang melalui tingkah lakunya tersalah menahan yang lain daripada dana di hendaklah dipertanggungjawabkan untuk akibat tindakannya. Prinsip ini bukan hanya terpakai berkenaan faedah pra-penghakiman di bawah s 11 AUS tetapi dalam kes faedah pasca penghakiman menurut A 42 k 12 KKM. Pengenaan faedah juga dijustifikasikan daripada perspektif polisi. Tuntutan yang bersaing untuk memberi pampasan bagi tanah yang wajib diperoleh adalah perkara yang serius. Seseorang yang mempertikaikan bayaran jumlah pempasan perlu disediakan untuk menanggung akibat daripada tindakannya jika mahkamah menentukan tuntutannya adalah tanpa merit. Bahawa penuntut benar-benar percaya dia mempunyai tuntutan sah terhadap jumlah pampasan atau sebahagian daripadanya adalah tidak material. Dengan menjadikan penuntut bersama bertanggungjawab untuk membayar faedah atas jumlah pampasan itu bukan sahaja adil untuk pemilik sebenar tanah yang diperoleh itu tetapi ia juga memastikan tuntuan tidak dibuat atas harapan penuntut tanpa merit (lihat perenggan 43, 46–47). B C D E

(3) Atas pembentukan perintah persetujuan yang teratur dalam tindakan S4, terma perintah berhubung kos dan faedah menghalang BH daripada menuntut kos dan faedah dalam tindakan tersebut (lihat perenggan 48).

(4) Aturan 90 k 6 KKM memperuntukkan untuk faedah dibayar berkaitan wang yang dimasukkan ke mahkamah. Kadar faedah 2% setahun ditetapkan dalam Pekeliling Ketua Pendaftar Bil Tahun 1998. Oleh itu BH berhak ke atas faedah pada 2% setahun ke atas wang yang didepositkan dalam mahkamah dalam tindakan-tindakan S3 dan S4. Haknya untuk menerima faedah tersebut tidak terjejas oleh perintah persetujuan dalam tindakan S4. Dengan mengguna pakai A 90 k 7 KKM, faedah 2% setahun perlu dibayar oleh Ketua Akauntan dari 1 Ogos 2002 hingga 30 September 2013 berkaitan wang yang didepositkan dalam tindakan S3 dan dari 1 Februari 2008 hingga 30 September 2013 berkaitan jumlah yang didepositkan dalam tindakan S4 (lihat perenggan 49–50, 58–59, 61–63). F G H

(5) Faedah yang kena dibayar oleh DR kepada BH hendaklah bermula dari masa jumlah pampasan sepatut dibayar kepada BH jika bukan kerana tuntutan bersaing DR yang menyebabkan wang itu dibayar kepada mahkamah sebaliknya. Berhubung tindakan S3, tarikh tersebut adalah 10 Julai 2002. Kadar faedah pra-penghakiman yang perlu dibayar oleh DR bagi tempoh berkaitan dalam kes ini, bagaimanapun, telah diselaraskan menurun sehingga 3% setahun untuk mengambil kira : (a) A 90 k 6(3) KKM, yang mana jika BH telah memohon di bawah I

peruntukan tersebut untuk wang pampasan didepositkan dalam akaun berfaedah dengan bank komersial berlesen, ia akan menerima jumlah yang lebih tinggi; dan (b) kelewatan oleh BH dalam memohon pelepasan wang pampasan sejurus selepas Mahkamah Persekutuan menolak rayuan DR pada 11 Oktober 2011. Oleh kerana BH hanya membuat permohonan pada 11 Mac 2013, DR tidak patut bertanggungjawab untuk faedah antara pra-penghakiman antara 12 Oktober 2011 dan 11 Mac 2013 (lihat perenggan 54, 56–57).

(6) Prinsip yang dinyatakan oleh Mahkamah Rayuan dalam kes *Parkson Corp Sdn Bhd v Fazaruddin bin Ibrahim (t/a perniagaan Fatama)* [2002] 4 MLJ 122 tidak mengecualikan mahkamah daripada mengawardkan sama ada faedah pra-penghakiman atau pasca penghakiman atas jumlah pampasan di bawah APT meskipun faedah tersebut tidak dinyatakan secara spesifik dalam APT (lihat perenggan 20 dan 35).]

Notes

For cases on compensation, see 8(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 2194–2241

Cases referred to

Aldora, The [1975] QB 748, QBD (refd)
BP Exploration v Hunt (No 2) [1983] 2 AC 352, QBD (refd)
Guna Sittampalam & Anor v Aik Hua Properties Sdn Bhd [1989] 2 MLJ 162, HC (refd)
Parkson Corp Sdn Bhd v Fazaruddin bin Ibrahim (t/a Perniagaan Fatama) [2002] 4 MLJ 122; [2002] 4 CLJ 18, CA (not folld)
Renas Development Sdn Bhd v Pemungut Hasil Tanah, Daerah Timur Lawt, Pulalu Pinang [1985] 1 MLJ 248 (folld)
Trans Elite Equipment Rental Sdn Bhd v PSC-Naval Dockyard Sdn Bhd [2003] 4 MLJ 30; [2003] 4 CLJ 270, HC (refd)
Tuan Haji Ahmed Abdul Rahman v Arab-Malaysian Finance Bhd [1996] 1 MLJ 30; [1996] 1 CLJ 241, FC (refd)

Legislation referred to

Civil Law Act 1956 s 11
Land Acquisition Act 1960 ss 29(2), 32, 38, 40A(2), 45(2), 47, 47(1), 48
Rules of Court 2012 O 42 r 12, O 56 rr 1(3A), O 90 r 6, O 90 r 6(3), 7(3)
Rules of the High Court 1980 O 42 r 12
Trade Descriptions Act 1972 s 16
UK Law Reform (Miscellaneous Provisions) Act 1934 [UK] s 3(1)

Alan Gomez (Anita Natalia with him) (Tommy Thomas) for the first applicant.
Richard Lee (Teh Eng Lay and Ong Ing Hou with him) (Richard Lee) for the second applicant.

Azizul Azmi Adnan JC:

INTRODUCTION

[1] This is a cross-appeal against the orders by the deputy registrar awarding interest and costs to Bungsar Hill Holdings Sdn Bhd, ('Bungsar Hill'), the registered proprietor of a piece of land located in Damansara Heights that had been compulsorily acquired under the Land Acquisition Act 1960 ('LAA') for the construction of the Sprint expressway in Kuala Lumpur. Damansara Realty Bhd ('Damansara Realty') has appealed against the order of the deputy registrar dated 23 September 2013 awarding interest on sums paid into court by the land administrator, *Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* ('the land administrator'). Bungsar Hill in turn has appealed against the decisions of the deputy registrar dated 7 February 2014 to award costs of RM2,500 for each of the applications and to dismiss the costs of the proceedings.

[2] An important point of law arises in this case, and that is whether a court has the jurisdiction to award interest against a co-applicant in land reference proceedings.

SALIENT FACTS

[3] As mentioned above, Bungsar Hill was the registered proprietor of the relevant land, which was acquired pursuant to the LAA in December 2000. In May 2001, Damansara Realty applied to the land administrator claiming an interest in the land through a lease agreement and requiring the matter to be referred to court. The land administrator applied to court pursuant to s 29(2) of the LAA for 75% of the compensation sum to be deposited with the court, and subsequent to the grant of the order, the sums of RM6,856,597.50 and RM802,503.68 were deposited, the former representing 75% of the purchase price and the latter the late payment charges. This application, Originating Summons No S3(S1)-21–90 of 2001, is referred to as the 'S3 action'.

[4] Land reference proceedings were instituted pursuant to s 38 of the LAA in respect of the amount of compensation awarded by land administrator. A consent order was entered, pursuant to which additional compensation of RM425,505 was paid into court. This application, Civil Application No S4-15–13 of 2003, is referred to as the 'S4 action'.

[5] The land reference proceedings were transferred and heard together with Civil Suit No S6-22–1051 of 2006 ('the S6 action'), involving a similar dispute between the parties. The outcome of this action was agreed by the parties to be dependent on a separate appeal in Civil Appeal No W-02–1208 of

2009. Damansara Realty's appeals to the Court of Appeal and the Federal Court were dismissed, and accordingly the S6 action was withdrawn by Damansara Realty.

[6] It was then settled that Bungsar Hill was the registered proprietor of the relevant land, and therefore entitled to the compensation sum. Bungsar Hill filed two notices of application on 11 March 2013 in the S3 and S4 actions for, inter alia, the release of the sums paid into court.

[7] On 30 April 2013, the registrar of this court granted orders in the S3 action and the S4 action for the release to Bungsar Hill of the sums paid into court by the land administrator. The sum of RM7,659,101.18 in respect of the S3 action was paid to Bungsar Hill on 21 October 2013, and RM425,505 in respect of the S4 action on 28 October 2013, in accordance with the 30 April 2013 orders.

[8] On 23 September 2013, the deputy registrar awarded Bungsar Hill pre-judgment interest of 8%pa and post-judgment interest of 5%pa on the sums paid into court by the land administrator pursuant to the S3 action and the S4 action. Damansara Realty appealed against this order.

[9] On 7 February 2014, the deputy registrar awarded costs of RM2,500 to Bungsar Hill for each of the applications in respect of the S3 and S4 actions, but dismissed the application for the costs of the proceedings. Bungsar Hill appealed against this order.

ISSUES

[10] Counsel for Damansara Realty argued that:

(a) the LAA does not provide for the power of the court to award interest and that accordingly any grant of interest by the court would be ultra vires its powers;

(b) the law already provides for interest payable by the Ministry of Finance in respect of amounts paid into court, which implied that there was no further liability for any party to pay additional interest on such amounts paid into court;

(c) no judgment had been entered against Damansara Realty in respect of the S3 action and the S4 action, and accordingly, pre-judgment interest and post-judgment interest should not arise;

(d) Damansara Realty did not receive any of the money that was paid into court, and therefore did not have the use of the money; and

(e) there was no agreement between the parties regarding interest on the

money deposited, and that in as far as the S4 action was concerned, because of the consent order referred to in para 4 ante, the principle of res judicata would prohibit the Bungsar Hill from claiming costs or interest.

[11] These issues are addressed in the following paragraphs.

POST-JUDGMENT INTEREST

Jurisdiction of the court to award interest

[12] Counsel for Damansara Realty rightfully pointed out to this court that the LAA does not specifically provide for any right of a party to land reference proceedings to claim interest on the compensation sum from another person who has made a claim to the land administrator in respect of the same piece of land.

[13] The scheme under the LAA does provide for late payment charges at an interest rate of 8% in respect of any amount not paid or deposited by the land administrator by the due date. However, there is no provision under the LAA that entitles interest to be claimed from a claimant who disputes the right of a person to receive compensation or who disputes the manner of apportionment of the compensation.

[14] Counsel for Damansara Realty further argued that, where a right or cause of action did not exist at common law, and is wholly a creature of statute, the only remedies available in respect of any breach of the relevant statutory provision or in respect of such rights or cause of action must be those that have been specifically provided for in the relevant statute. Thus, argued counsel, because the right to compensation following the compulsory acquisition of land is a right that has been created by statute by virtue of the LAA, the universe of available remedies must necessarily only be contained within the four corners of the LAA.

[15] Mr Teh for Damansara Realty cited the case of *Parkson Corp Sdn Bhd v Fazaruddin bin Ibrahim (t/a Perniagaan Fatama)* [2002] 4 MLJ 122; [2002] 4 CLJ 18 in support of this point. This Court of Appeal decision involves a trade description order granted under the Trade Descriptions Act 1972 in favour of the respondent in the action. The appellant tried to have the trade description order set aside, but failed. It then appealed but later withdrew its appeal. Subsequently, the respondent made an application for assessment of damages and an account of profits, which the High Court allowed. The High Court directed for assessment before the registrar of the court. The appellant appealed

to the Court of Appeal, asserting that the High Court ought not have directed the assessment of damages.

[16] Gopal Sri Ram JCA (as he then was), in delivering the judgment of the court, considered s 16 of the Trade Descriptions Act 1972, which provided for the right of a proprietor or user of a trademark to apply to the High Court for a trade description order:

> This provision is new. There is no right at common law for a party complaining that his mark or other device or trade description has been infringed to approach the court either ex parte or inter partes to obtain an order such as that provided by s 16. Any such complaint to be actionable must satisfy the elements of the well-known tort of passing-off and related torts, such as malicious falsehood. That the remedy provided by s 16 is novel is made patently clear by Parliament in the preamble of the Act, which in its material part reads:
>
> > An Act to consolidate and amend the laws relating to merchandise marks with *new provisions* prohibiting misdescription of goods ... and for related purposes. (Emphasis added.)
>
> The present case accordingly falls to be covered by the established principle, which deals with the consequences of Parliament providing novel or new remedy. The principle is ancient. It has been adverted to in numerous cases. We do not propose to go through them all here. Suffice that we mention the seminal cases. Of these the first is *Pasmore v Oswaldtwistle Urban District Council* [1898] AC 387, where (at p 394) the Earl of Halsbury LC said:
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> > The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy or any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law.
>
> The second is *Wilkinson v Barking Corporation* [1948] 1 KB 721, where at p 724, we find Asquith LJ saying this:
>
> > It is undoubtedly good law that where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal, and not to others.
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> These cases have been applied repeatedly by the apex courts of this country. See for example, *Tan Chye Choo & Ors v Chong Kew Moi* [1970] 1 MLJ 1. See also *Metal Industry Employees Union v Registrar of Trade Unions & Ors* [1976] 1 MLJ 220.
>
> Applying this settled principle to the present case, it is clear that an applicant moving the court under s 16 is only entitled to the specific remedy provided by it.
>
> If Parliament had wished to confer jurisdiction upon a court making an order under s 16 to also award damages, it would had said so expressly. It is therefore plain what

> Parliament intended was to only criminally punish the infringer of merchandising marks and the perpetrator of any other act or omission specifically proscribed by the Act.

[17] Mr Gomez for Bungsar Hill cited in reply the case of *Renas Development Sdn Bhd v Pemungut Hasil Tanah, Daerah Timur Lawt, Pulalu Pinang* [1985] 1 MLJ 248. This case involved the LAA and a consent order for payment of an additional sum by way of compensation. Edgar Joseph Jr J (as he then was) held that the consent order was not an award within the meaning of the LAA and that accordingly ss 32 and s 48 of the LAA did not apply, and that O 42 r 12 of the Rules of the High Court 1980 applied, entitling the court to award interest from the date of the pronouncement of the consent order until the date of payment of the additional compensation sum.

[18] It has to be noted that the facts of *Renas* are different from the present case. Here the parties are concerned with the issue of interest on sums that had been deposited with the court, whereas *Renas* was concerned with an additional compensation sum that had not yet been paid.

[19] Nonetheless, what is pertinent here is that the High Court had ruled that the provision in the then-applicable Rules of the High Court 1980 relating to interest on judgment debts applied, by virtue of s 45(2) of the LAA, which provides:

> Save in so far as they may be inconsistent with anything contained in this Act, the law for the time being in force relating to civil procedure shall apply to all proceedings before the Court under this Act.

[20] It follows therefore that the proposition put forward by Mr Teh, which is that this court does not have the jurisdiction to award interest in the absence of an express provision in the LAA, is incorrect.

[21] The distinction that may be made between *Parkson Corp Sdn Bhd v Fazaruddin bin Ibrahim (t/a Perniagaan Fatama)* and *Renas* is this: under the Trade Descriptions Act 1972, there is no provision at all for the award of damages to the successful applicant for a trade descriptions order, whereas under the LAA there clearly is a right of a registered proprietor to be paid a compensation sum, and accordingly post-judgment interest should be recoverable under O 42 r 12 of the Rules of Court 2012, read together with s 45(2) of the LAA, on the authority of *Renas*. Therefore the principle enunciated in *Parkson Corp Sdn Bhd v Fazaruddin bin Ibrahim (t/a Perniagaan Fatama)* would not apply in the case of the LAA to preclude a party to claim interest on a compensation sum, even though such interest has not been specifically provided for in the LAA.

Whether a land reference award is a 'judgment' under Section 11

[22] I now address the interpretation of an 'award' for the purposes of s 47 of the LAA. In my view, s 47(1) of the LAA must be read to mean that a decision must be signed by the assessors only where assessors have been appointed pursuant to s 40A(2) of the LAA. Where a reference is made to court and that reference does not involve a dispute as to the amount payable, then assessors will not be appointed, but this does not make the decision of the judge sitting alone any less of a 'judgment' for the purposes of s 47. Accordingly, any award made pursuant to Part V of the LAA will be considered to be a judgment not only for the purposes of O 42 r 12 of the Rules of Court 2012 but also s 11 of the Civil Law Act 1956.

Order 42 rule 12

[23] The specific wordings of O 42 r 12 of the Rules of Court 2012 are as follows:

> Subject to rule 12A, except when it has been otherwise agreed between the parties, every judgment debt shall carry interest at such rate as the Chief Justice may from time to time determine or at such other rate not exceeding the rate aforesaid as the Court determines, such interest to be calculated from the date of judgment until the judgment is satisfied.

[24] Two observations may be made in connection with this rule: first, O 42 r 12 makes it mandatory that a judgment debt carries interest for the post-judgment period.

[25] Secondly, O 42 r 12 of the Rules of Court 2012 is worded differently from its predecessor provision under the Rules of the High Court 1980. I interpret the words 'except when it has otherwise been agreed between the parties' to mean that the mandatory nature of O 42 r 12 is displaced where such as agreement exists.

[26] I now consider the effect of the consent order in the S4 action.

The consent order in the S4 action

[27] It will be recalled that a consent order was granted in the S4 action by which the parties agreed for the additional sum of RM425,505 to be paid into court. Paragraph (d) of the consent order of 22 November 2007 stated:

> (d) Tiada perintah mengenai kos dan faedah.

[28] Counsel for Damansara Realty posited that, as a result of this consent order, Bungsar Hill was not entitled to interests or costs in the S4 action. The question is whether the terms of the order was intended to cover the period from the acquisition of the land until the final determination of the dispute, or whether the order applied only with respect to the period between the compulsory acquisition of the land and the 22 November 2007 consent order.

[29] This is a matter of the proper construction of the consent order in question. Although the argument may be made that the parties only intended for the terms of the order to apply to the action theretofore conducted, there is nothing in the plain words of the consent order that supports such a construction, and I accordingly hold that Bungsar Hill is precluded from claiming costs and interest in respect of the S4 action.

[30] The submission of counsel for Damansara Realty that there was no agreement between the parties regarding interest on the money deposited need not detain us further except for me to state that the absence of agreement does not preclude the proper exercise of judicial discretion to award interest.

The amount on which post-judgment interest is payable

[31] Where post-judgment interest is awarded, it must be on the judgment debt, which comprises the principal sum as well as the pre-judgment interest. Abdul Malik Ishak J (as he then was) succinctly explained this point in *Trans Elite Equipment Rental Sdn Bhd v PSC-Naval Dockyard Sdn Bhd* [2003] 4 MLJ 30; [2003] 4 CLJ 270:

> The sum total of it all would be this. That the post-judgment interest on the 'judgment debt' ought to be on the total of both the principal sum claimed and also the pre-judgment interest for the following salient reasons:
>
> (1) that both the principal sum claimed and the pre-judgment interest (which represents damages for the period which the plaintiff could not use the principal sum) merged into the judgment debt on 24 June 2002 — and that would be the date of judgment;
>
> (2) that this is prescribed by statute, namely, O 42 r 12 of the RHC and that there is no room, at all, for the exercise of discretion by the learned SAR to award post-judgment interest on only the principal sum and not the judgment debt; and
>
> (3) that the award of post-judgment interest on both the principal sum claimed and also the pre-judgment interest are practised in our country as well as in Singapore.

The applicable interest rate

[32] The applicable interest rate prescribed in respect of judgment debts by *Arahan Amalan Ketua Hakim Negara Bil 1 Tahun 2012* is 5%pa.

[33] The issue of whether such interest is recoverable from a co-applicant in a land reference proceeding (such as Damansara Realty in the present case) is addressed at para 43, *post*. I now turn to the issue of pre-judgment interest.

PRE-JUDGMENT INTEREST

[34] Section 11 of the Civil Law Act 1956 empowers the court to award pre-judgment interest. Section 11, so far as it is material for the present purposes, provides as follows:

> In any proceedings tried in any Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest as such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment

[35] The preliminary point may be made that the analysis in paras 12–21 applies equally in connection with the award of pre-judgment interest under the LAA, and therefore that the principles established in the case of *Parkson Corp Sdn Bhd v Fazaruddin bin Ibrahim (t/a Perniagaan Fatama)* do not apply to oust the jurisdiction of this court to award interest under the LAA. A second observation is that s 11, unlike O 42 r 12, is not mandatory in nature, and instead creates a discretion of the court whether or not to award interest.

[36] Counsel for Damansara Realty argued that s 11 of the Civil Law Act 1956 cannot apply in the present instance, on the basis that:

(a) s 11 only applies in respect of proceedings for the recovery of any 'debt or damages';

(b) there was no debt due to Bungsar Hill from Damansara Realty; and

(c) there was no judgment ordered against Damansara Realty.

Can interest be awarded against a co-applicant?

[37] Counsel for Damansara Realty cited the following passage from *Guna Sittampalam & Anor v Aik Hua Properties Sdn Bhd* [1989] 2 MLJ 162 in support for the proposition that, because the compensation sum was not a debt due from Damansara Realty to Bungsar Hill, s 11 does not confer on this court the discretion to award pre-judgment interest against Damansara Realty, as a co-applicant in a land reference proceeding:

> The House of Lords has held that the words 'any debt or damages' in s 3(1) of the UK Law Reform (Miscellaneous Provisions) Act 1934 'are very wide, so that they cover any sum of money which is recoverable by one party from another, either at common law or in equity or under a statute' (such as the UK Law Reform (Frustrated Contracts) Act 1943 in that case: see *BP Exploration Co (Libya) Ltd v*

Hunt (No 2) [1982] 2 WLR 253. As s 11 of our Civil Law Act 1956 is in pari materia with the said s 3(1) of the UK Law Reform (Miscellaneous Provisions) Act 1934, the words 'any debt or damages' in s 11 of our Civil Law Act 1956 should also be construed to cover any sum of money which is recoverable by one party from another.

[38] Gunn Chit Tuan J (as His Lordship then was) in *Guna Sittampalam* cited with approval the decision of the House of Lords in *BP Exploration v Hunt (No 2)* [1983] 2 AC 352 where it was held that the expression 'debt' was to be construed widely and that accordingly sums paid pursuant to a frustrated contract would bear interest under the provisions of English law that are in pari materia with s 11 of the Civil Law Act 1956.

[39] Lord Brandon in *BP Exploration* had the occasion to consider the same point in *The Aldora* [1975] QB 748, where it was held that the expression 'debt' was wide enough to cover salvage remuneration claim by salvors of a vessel.

[40] All three cases referred to in the preceding paragraphs dealt with sums due from one party to another party and the pre-judgment interest recoverable from the former by the latter. In my view, none of the cases is an authority for the proposition that s 11 precludes interest being claimed in respect of a debt due from a party in circumstances where the person from whom interest is being claimed was responsible for the delay in the discharge of that debt.

[41] The word debt is defined in the *Oxford English Dictionary* as a liability or obligation to pay or render something. This is, in my view, sufficient to encompass the compensation due to be paid to a claimant in a land reference proceeding.

[42] The crux of the issue is this: the plain words of s 11 do not specify any limit on the identity of the person from whom interest may be claimed.

[43] It is true that, in the vast majority of cases, interest would be claimed from the person from whom a debt is due. Where however, a person has by his conduct caused a payment that was rightfully due to another person to be delayed, fairness demands that the person compensates that other person for the opportunity cost incurred by having been kept out of funds. This principle applies not only in respect of pre-judgment interest under s 11 of the Civil Law Act 1956, but also in the case of an award of post-judgment interest pursuant to O 42 r 12 of the Rules of Court 2012.

[44] Counsel for Damansara Realty cited a number of cases in support of the proposition that, for interest to be awarded, a party must not only have kept the

other party out of funds, but must also have had the benefit of the money for the period in respect of which interest is claimed. It suffices for me to mention just one such case:

> The power of the court to award interest on damages is contained in s 11 of the Civil Law Act, 67 of 1956 (see also O 40 r 11 of the Supreme Court Rules). This section gives the court power, if it thinks fit, to order that there shall be included in the sum in which judgment is given interest at such rate as it thinks fit on the whole or any part of the damages for the whole or any part of the period (emphasis mine) between the date when the cause of action arose and the date of judgment. Therefore, in proceedings for the recovery of damages, the court generally exercises its power so as to include in that sum interest on those damages or on such part of them as it considers appropriate, unless it is satisfied that there are special reasons why no interest should be given. *The basis of an award of interest is that the defendant has kept the plaintiff out of his money and has had the use of it himself*, so he ought to compensate the plaintiff accordingly. Section 11 of the Civil Law Act is, I think, modelled on the provisions of s 3(1) of the (UK) Law Reform (Miscellaneous Provisions) Act 1934, and those provisions have been judicially considered in a number of cases, where the courts have laid down certain guide lines (see, for example, *Jefford v Gee* [1970] 1 All ER 1202) *Lim Kar Bee v Abdul Latifbin Ismail* [1978] 1 MLJ 109, per Raja Azlan Shah FJ. (Emphasis added.)

[45] Counsel for Bungsar Hill on the other hand, also quoted a number of cases where the element of benefit was not specified in the dicta, an example of which follows:

> Pre-trial interest is allowed by law to be claimed by the appellant. This is specified in s 11 of the Civil Law Act 1956 as well as in judicial pronouncements — see *Trans Elite Equipment Rental Sdn Bhd v PSC-Naval Dockyard Sdn Bhd* [2003] 4 MLJ 30; *Lee Guan Par v Hotel Universal Sdn Bhd* [2005] 4 MLJ 589. *The objective of this is to compensate the plaintiff for the loss of use of the money which the defendant had kept him out of it from the time when he ought to be paid*. Though the word 'tried' is used in s 11 of the Civil Law Act 1956, it is my humble opinion that this should be given a broad interpretation to include any order made by the court, be it judicially made or done administratively (as described in the White Book). *Mirra Sdn Bhd v The Ayer Molek Rubber Company Bhd* [2008] 2 MLJ 348, per James Foong JCA. (Emphasis added.)

[46] In my view, the fundamental principle regarding the payment of interest is to compensate the claimant for the loss of use of the funds, regardless of whether the other party had use of the funds for the relevant period. It is only fair that where a person has by his conduct wrongfully kept another out of funds that he be held liable for the consequences of his action.

[47] The imposition of interest can also be justified from a policy perspective: a competing claim to compensation for compulsorily acquired lands is a serious matter and should not be made lightly. A person who disputes the payment of a compensation sum must be prepared to bear the

consequences of his actions should a court determine that his claim is without merit. That a claimant genuinely believed that he had a legitimate claim to the compensation sum or to a part of that sum is immaterial. Making a co-claimant responsible for the interest on the compensation sum paid is not only fair for the rightful proprietor of the acquired land but also ensures that claims are not made on the whim of a hopeful but unmeritorious claimant.

[48] To summarise the issues thus far, I find that:

(a) this court does indeed have the jurisdiction to award both pre-judgment and post-judgment interest in respect of a compensation sum awarded under the LAA;

(b) the court's discretion may properly be exercised to award interest on sums paid into court by the land administrator against a co-claimant in a land reference proceeding, notwithstanding that the co-claimant did not have the use of the money for the relevant period; and

(c) on a proper construction of the consent order in the S4 action, the term of the order on costs and interest precludes Bungsar Hill from claiming costs and interest in that action.

Order 90 r 6 of the Rules of Court 2012

[49] Order 90 r 6 of the Rules of Court 2012 provides for interest to be paid in respect of money lodged in court. An interest rate of 2%pa has been prescribed pursuant to *Pekeliling Ketua Pendaftar Bil 1 Tahun 1998* ('Pekeliling 1/1998').

[50] Accordingly, Bungsar Hill ought to have received interest of 2%pa in respect of sums that had been paid into court. However, the affidavit evidence before this court indicated that such interest had not been paid to Bungsar Hill.

[51] The appeals before me from the orders granted by the registrars in the S3 action and the S4 action have been made pursuant to O 56 of the Rules of Court 2012. Any such appeal to a judge in chambers from a decision of a registrar is, of course, by way of a rehearing (see for example *Tuan Haji Ahmed Abdul Rahman v Arab-Malaysian Finance Bhd* [1996] 1 MLJ 30; [1996] 1 CLJ 241), and I am to exercise my discretion as though the matter has come before me for the first time. In the course of submissions, I allowed Bungsar Hill to file an additional affidavit to put before this court evidence whether the 2%pa interest had been paid in accordance with Pekeliling 1/1998. This evidence obviously would not have been available at the time the orders of 30 April 2013 and 23 September 2013 were made, as the sums had not yet been released from the court at that time. Hence, in my view, the strictures of O 56 r 3A of the Rules of Court 2012 have been complied with. To ameliorate any unfairness

that may arise from any unrebutted averments in this additional affidavit, I also permitted Damansara Realty to file an affidavit in response.

[52] Where a sum of money has been deposited into court, a party may apply to court for the money to be deposited into an interest bearing account with a licensed financial institution. This is provided for in O 90 r 6(3):

> (3) Nothing in these Rules shall affect the right of parties to the action from applying to the Court for the money lodged in Court to be deposited in an interest bearing account with any licensed bank or financial institution in Malaysia.

[53] There is no evidence before this court that such an application was made. If such an application had been made, Bungsar Hill would have received compounded interest at an average rate of approximately 3%pa, based on the evidence provided to this court on the deposit rates of licensed commercial banks published by Bank Negara Malaysia, depending on the selected tenure of the deposit.

[54] In *Renas*, the High Court determined the applicable rate of interest by reference to the rate prescribed in s 48 of the LAA (which at that time was 6%). I see no reason to depart from this principle, save and except that the interest rate in the present instance should be adjusted downwards to 3%pa take into account the following:

(a) O 90 r 6(3). Had Bungsar Hill applied under O 90 r 6(3) for the compensation sums to be paid into court, it would have received a higher sum as outlined in the preceding two paragraphs; and

(b) Delay by Bungsar Hill. The order of the Federal Court referred to in para 5 ante dismissing the appeal by Damansara Realty was dated 11 October 2011. Accordingly, Bungsar Hill ought to have applied for the release of the compensation sums immediately thereafter. It did not. The notice of application was only filed on 11 March 2013. Accordingly, Damansara Realty ought not be liable for pre-judgment interest for the period between 12 October 2011–11 March 2013.

[55] After deducting the following from the interest amount on the compensation sum at the rate of 8%pa (applicable by analogy to s 48 of the LAA):

(a) the approximate compounded interest Bungsar Hill would have received had it applied for the compensation sum to be placed on deposit with a licensed commercial bank; and

(b) interest for the approximate period of one a half years for which I have

held Bungsar Hill to be disentitled to interest on account of its delay, I have determined the implied (non-compounded) interest rate for the relevant period to be 3%.

Time from which interest runs

[56] On the principle that interest is awarded to compensate a claimant for loss of use of money, the interest payable by Damansara Realty should run from the time at which the compensation sum would have otherwise been paid to Bungsar Hill, but for the claim made by Damansara Realty, which had resulted in the sum being paid into court instead.

[57] In respect of the S3 action, this date was 10 July 2002.

INTEREST PAYABLE BY THE COURT

[58] As the nature of this appeal is a rehearing, it is open to me to supplement the orders of the registrar of 30 April 2013 by ordering that interest at a rate of 2%pa be paid to Bungsar Hill in respect of the sums deposited into court in the S3 action and the S4 action.

[59] In my view, the interest payable under O 90 r 6 of the Rules of Court 2012 accrues as of right to the beneficiary of the sum deposited into court. In the present case the right of Bungsar Hill to the 2%pa interest remains unaffected by the consent order in the S4 action.

[60] Order 90 r 6 provides that 'money lodged in court to the credit of any account shall be deemed to be placed on deposit, and shall be credited with interest'. No distinction is made between interest and principal (unlike s 11 of the Civil Law Act). Accordingly, in relation to the S3 action, interest would be payable on the total sum deposited into court, which is RM7,659,101.18.

[61] Order 90 r 7 provides for the manner in which interest is to be calculated in respect of sums deposited into court. Subrule (3) provides:

> Such interest begins on the first day of the calendar month next succeeding that in which the money is placed on deposit, and ceases from the last day of the calendar month next preceding the day of the withdrawal of the money from deposit.

[62] In respect of the S3 action, the land administrator forwarded a cheque to the court on 8 July 2002, which was received by the court on 10 July 2002 and for which a receipt was issued on 15 July 2002. The compensation sum was paid out by the court to Bungsar Hill on 21 October 2013. Applying O 90 r 7(3): interest of 2%pa payable by the accountant general shall therefore run

from 1 August 2002 (being the first calendar day of the month following the deposit of the money) until 30 September 2013 (being the last calendar day of the month preceding the month in which payment was made).

[63] In relation to the S4 action, a receipt was issued by the court for the additional compensation sum on 17 January 2008. This sum was paid out by the court to Bungsar Hill on 28 October 2013. Accordingly, the accountant general is to pay interest of 2%pa on the amount deposited into court in respect of the S4 action beginning from 1 February 2008–30 September 2013.

ORDERS

[64] For the reasons set out above and having today heard submissions of counsels on costs, I order:

(a) in respect of the S3 action:

(i) that Bungsar Hill be paid interest on the sum of RM7,659,101.18 at a rate of 2%pa pursuant to and in accordance with O 90 rr 6 and 7 of the Rules of Court 2012 and Pekeliling 1/1998;

(ii) that Damansara Realty pays to Bungsar Hill:

(1) pre-judgment interest at a rate of 3%pa on the principal sum of RM6,856,597.80 from 10 July 2002–30 April 2013;

(2) post-judgment interest at a rate of 5%pa on the sum of RM7,659,101.18 from 1 May 2013–21 October 2013; and

(iii) that Damansara Realty pays costs of RM40,000 to Bungsar Hill; and

(b) in respect of the S4 action:

(i) that Bungsar Hill be paid interest on the sum of RM425,505 at a rate of 2%pa pursuant to and in accordance with O 90 rr 6 and 7 of the Rules of Court 2012 and *Pekeliling 1/1998*; and

(ii) that there be no order as to interest or costs.

Order accordingly.

Reported by Ashok Kumar